

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**

| | | |
|---------------------------|---|-------------------------|
| UNITED STATES OF AMERICA, |) | |
| Plaintiff, |) | |
| |) | 3:12-cr-00002-RLY-CMM-2 |
| vs. |) | |
| |) | |
| KENNETH FOX, |) | |
| Defendant. |) | |

REPORT AND RECOMMENDATION

On October 13, 2020, the Court held an initial hearing on the Petition for Warrant for Offender Under Supervision filed on May 23, 2019. Kenneth Fox ("Defendant") appeared in person with FCD counsel, Dominic Martin. The Government appeared by Todd Shellenbarger, Assistant United States Attorney. U. S. Probation appeared by Officer Jennifer Considine and Officer Katrina Sanders.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. §3583:

1. The Court advised Defendant of his rights and provided him with a copy of the petition. Defendant orally waived his right to a preliminary hearing.

2. After being placed under oath, Defendant admitted Violations 1 and 2.
[Docket No. 157.]

3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

| | |
|------------------------------------|---------------------------------------|
| <u>Violation Number</u> | <u>Nature of Noncompliance</u> |
|------------------------------------|---------------------------------------|

| | |
|----|--|
| 1. | "The defendant shall not commit another federal, state, or local crime." |
|----|--|

On May 17, 2019, the offender was arrested on a writ and was placed in the Vanderburgh County Jail. On May 18, 2019, while incarcerated on the writ, the offender was charged with Dealing Marijuana; a felony, Possession of Methamphetamine; a felony, Possession of Marijuana; a felony, Trafficking with an Inmate Controlled Substance; a felony, in Vanderburgh County Case No. 82C01-1905-MC-1531.

2. "The defendant shall not possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance."

The offender reported for urinalysis drug screens which resulted in the following results: on April 2, 2019, he tested positive for cannabinoids; on May 8, 2019, he tested positive for cannabinoids and amphetamines; and on May 14, 2019, he tested positive for amphetamines.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade **A** violation.
- (b) Defendant's criminal history category is VI.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is **24** months imprisonment.

5. Parties jointly recommended that defendant be placed in VOA facility for six (6) months and continue Supervised Release for two (2) years complying with all conditions. Parties request credit for time served beginning from October 6, 2020.

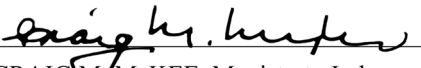
6. The Magistrate Judge, having considered the factors in 18 U.S.C. §3553(a), and as more fully set forth on the record, finds that:

- (a) The Defendant violated the conditions in the petition;
- (b) That the agreement of the parties is an appropriate resolution of this matter and the agreement is commended to the favorable consideration of the District Judge;

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties further agree that defendant should remain detained pending the District Judge's review of the report and recommendation. Should the District Judge accept this report and recommendation, the parties are further agreed that detention should continue pending an available bed for the defendant at VOA.

The parties have waived the 14-day objection period.

Dated: October 13, 2020


CRAIG M. McKEE, Magistrate Judge
United States District Court
Southern District of Indiana

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